

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN P. OSTASIEWSKI and LYNN S.
OSTASIEWSKI,

UNPUBLISHED
July 24, 1998

Plaintiffs-Appellees,

v

No. 200868
Saginaw Circuit Court
LC No. 94-004565 NZ

CJE CORPORATION doing business as HMA
HOME INSPECTION SERVICE,

Defendant-Appellant,

and

EARL R. GARNER, KAY F. GARNER, and
ROBERT VAN AUKEN doing business as
VAN AUKEN CONSTRUCTION,

Defendants.

Before: Bandstra, P.J., and Griffin and Young, Jr., JJ.

PER CURIAM.

In this negligence action, defendant CJE appeals by right from a judgment in favor of plaintiffs for \$54,415.24, which was entered following a jury trial. Because we conclude that summary disposition should have been granted on this negligence claim, we reverse.

Defendant argues that the trial court erred in refusing to grant its pretrial motion for summary disposition pursuant to MCR 2.116(C)(8). It maintains that under Michigan law, an action in tort requires a breach of duty separate and distinct from a breach of contract, and defendant's sole duty to plaintiffs in the instant case was purely contractual in nature. We agree.

Although the trial court properly found that it was defendant CJE's misfeasance, not its nonfeasance, that allegedly caused damage to plaintiffs, the trial court erred in refusing to grant defendant's motion for summary disposition regarding plaintiffs' negligence claim. A relationship giving

rise to a duty can arise from a contract, *Clark v Dalman*, 379 Mich 251, 259; 150 NW2d 755 (1967); *Antoon v Community Emergency Medical Service, Inc*, 190 Mich App 592, 595; 476 NW2d 479 (1991). However, not every contractual obligation can lead to a duty under tort law. *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 82; 559 NW2d 647 (1997); *Hart v Ludwig*, 347 Mich 559, 563; 79 NW2d 895 (1956). As a general rule, there must be some breach of duty distinct from the breach of contract in order to recover in tort. *Id.* In the instant case, had defendant been a contractor who negligently fixed plaintiffs' house and had this negligence resulted in either damage to the house or personal injury to plaintiffs, an action for negligence would be proper. Here, however, defendant's negligence did not result in any physical harm to plaintiffs or their property. The harm already existed when defendant's employee inspected the house. Defendant's negligence resulted only in an "intangible economic loss." This harm was not one which arose apart from the contract itself. *Rinaldo's*, *supra* at 85. Therefore, the trial court should have granted CJE's motion for summary disposition pursuant to MCR 2.116(C)(8) regarding plaintiffs' negligence claim.

Since we hold that the trial court should have granted defendant's motion for summary disposition, we need not address the other issues raised by defendant.

Reversed.

/s/ Richard A. Bandstra

/s/ Richard Allen Griffin

/s/ Robert P. Young, Jr.